SUPREME COURT U.S.
Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1030

JOSEPH DEL NOBILE,

Petitioner,

vs.

THE STATE OF NEW JERSEY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

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I

Reference to official reports of opinions delivered in the Court below.

The petitioner's reference to the opinions below is correct.

II

Counter-Statement Concerning Jurisdiction

It is submitted that the Order Denying Petition for Certification of the Supreme Court of New Jersey, entered on October 7, 1970 (p31a) was in no way repugnant to the Constitution of the United States and the Court did not decide any Federal issue or question not heretofore determined by this Court or in any way contrary to the applicable decisions of this Court.

III

Question Presented For Review

1. Whether, in compliance with the Fourth Amendment of the United States Constitution, the application for a search warrant, dated January 24, 1968, contained sufficient grounds for a finding of probable cause for the issuance on January 24, 1968 of a search warrant, by the Honorable Benjamin P. Galanti, Judge of the Bergen County (New Jersey) Court.

IV

Introductory Statement

Petitioner's statement of the case (Pb3 to Pb6) is correct.

ARGUMENT

The ultimate test in a matter such as this, of course, is whether there was a sufficient basis set forth in the affidavit of Investigator Hynes upon which the issuing magistrate could independently determine probable cause.

The *Aguilar* v. *Texas,* 378 U. S. 108, 12 L. Ed. 2nd 723, 84 S. Ct. 1509 (1964) and *Spinelli* v. *United States,* 393 U. S. 410, 21 L. Ed. 637, 89 S. Ct. 584 (1969) cases set forth the two-pronged test set forth in petitioner's brief (Pb7) and which apply to the matter at bar as follows:

First: The underlying circumstances upon which to judge independently the validity of informant's conclusion. The information attributed to the informant, while perhaps in less detail than set forth in *Draper* v. *United States,* 358 U. S. 307, 3 L. Ed. 2nd 327, 79 S. Ct. 329 (1959) is nonetheless more substantial than that in either *Spinelli,* supra, or *Aguilar,* supra, and rises above "casual rumor . . . or general reputation". *Spinelli,* supra, at p. 416.

The information received from the informant indicates detailed knowledge of petitioner's daily activities, to wit: telephone gambling at home, daily trips at specified hours to a specified location, specified time of visit at the location, and specified return home with bets. While it is

fact that the manner in which the informant received his information is not set forth, it is submitted that the detail set forth preponderates towards a conclusion that it is personal knowledge.

Additionally, the issuing magistrate had before him the fact that the informant had provided information which led to the arrest of two named persons for gambling violations. While convictions, instead of arrests, might have lent more weight to the informer's credibility or reliability, it is contended that the delay between arrest and conviction attendant to the administration of criminal justice should not mitigate against timely police work.

Second: Support of the credibility or reliability of the informant. Aware of this second requirement, Investigator Hynes undertook a surveillance of the petitioner, based upon the informant's information. The reliability or credibility of the information was established on the five days petitioner was observed—all of the observable information proved to be fact. Additionally, petitioner was, on each occasion, in the company of a known gambler, which fact added additional weight to the information received.

The issuing magistrate did find probable cause that petitioner was engaged in illegal gambling based upon the affidavit. Respondent contends that the finding was reasonable, based on the informant's information and conclusion and on Investigator Hynes' corroboration of the information by personal observation of petitioner's activity.

CONCLUSION

For the reasons hereinbefore set forth, it is respectfully urged that the Petition for Certiorari be denied.

Respectfully submitted,

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